

**BEFORE THE
PUBLIC SERVICE COMMISSION**

**Application of Highland Wind Farm, LLC,
for a Certificate of Public Convenience and Necessity
to construct a 102.5 MW Wind Electric Generation Facility Docket No.: 2535-CE-100
and Associated Electric Facilities, to be Located in
the Towns of Forest and Cylon, St. Croix County, Wisconsin**

**FOREST VOICE STATEMENT IN RESPONSE TO THE COMMISSION'S ORDER TO
REOPEN, NOTICE AND REQUEST FOR COMMENTS**

INTRODUCTION

Forest Voice, an organization of residents of the Town of Forest who oppose the proposed Highland Wind Farm, is a full party to this docket before the Commission and has participated as such in all hearings and other proceedings. Forest Voice remains a party and submits this Statement in response to the Commission's Order to Reopen, Notice and Request for Comments dated March 15, 2016. (PSC REF# 283217)

**I. THE COMMISSION ORDER TO REOPEN, NOTICE AND REQUEST FOR
COMMENTS VIOLATES THE DECISION AND ORDER OF THE CIRCUIT
COURT.**

The Town of Forest, another party to this docket, petitioned the Circuit Court of St. Croix County for review of the Commission's Final Decision on Reopening, PSC REF#192339¹. On August 27, 2015, in *Town of Forest v. Public Service Commission of Wisconsin, Case No. 14 CV 18 (St. Croix County Circuit Court)*, the Court entered its Decision and Order. It remanded this case back to the Commission for further proceedings. The Commission's Order to Reopen, PSC REF# 283217, misinterprets the Court's order in significant and relevant ways.

¹ Commissioner Ellen Nowak dissented from that decision.

A. A Comment Period Instead of the Hearing Ordered By the Court Denies the Parties the Opportunity to Present Rebuttal Evidence and Argument On Major Issues.

The Circuit Court found on appeal that the Commission's adoption of a new compliance standard of 95% lacked any substantial evidence in the record to support it, and ordered that "the action of the Commission adopting a 95% compliance standard is set aside and the matter remanded to the Commission for the purpose [of] conducting a further hearing on the issue of adopting a percentage standard.." Court Decision, p. 114. (Emphasis added)

The Court remanded this matter because the Commission had failed to provide a fair and adequate hearing process as required by Wisconsin law. The Commission's Order to Reopen of March 15, 2016, however, repeats its original error of failing to provide for adequate process. The Order to Reopen allows only a short, 30-day comment period for the submission of simultaneous comments by the parties and the public on the contested issues, rather than a full hearing. Moreover, it compounds this error by deviating from the Court's remand order to take up new issues of whether any residences, including the original six, might be included for lower noise requirements.

Further, the Commission's Order to Reopen seeks to now cover the expansive topic of the relationship between health concerns and wind energy systems, as established in scientific studies.

The comment process provided for in the Order to Reopen allows for written submissions only, without the opportunity to rebut or cross-examine or even respond to whatever new evidence that Highland Wind Farm LLC (Highland) might offer. Forest Voice cannot anticipate Highland's position on the issues, much less what supporting evidence it might offer. Will Highland pursue reestablishing a percentage-based compliance standard and if so, on what

basis? Will Highland seek to strike out and oppose the six residences already found to be sensitive to the effects of wind turbine noise? If so, on what basis?

How fair is it that Forest Voice will have no opportunity to cross-examine or rebut or even respond to whatever claims are made by Highland which may adversely affect the health and lives of families living in the project area?

The Court remanded this case for the purpose of “conducting further hearing,” emphasizing that the Commission is a “PUBLIC Service Commission” that must consider the needs of the public. (Emphasis in the original.) In this context, “conducting a further hearing” can only be reasonably interpreted as requiring a full evidentiary hearing in which the parties can present expert witnesses, cross examine those witnesses, and present rebuttal testimony and argument. The Court remanded this matter to the PSC because of the Commission’s failure to provide adequate process. If the Commission now makes any major change in its order points, it would again be failing to provide adequate process if it does not give the parties the opportunity to provide rebuttal evidence and argument and engage in cross-examination. The Commission’s Order to Reopen providing for nothing more than a 30-day comment period rather than a full hearing does not comply with the Court’s Decision and Order. If the record here is restricted to comments alone, once again the record will be incomplete and inadequate for the Commission to decide the issues on remand. And once again, the Commission will have failed to provide an adequate and fair process for the parties.

Reliance on only limited comments denies all parties a fair opportunity to present a case in favor of or against a compliance standard and whether the noise limitation on the sensitive residences should stand. Forest Voice respectfully requests that the Commission set this case for

a full evidentiary hearing in which the parties can present testimony, including testimony from expert witnesses, cross examine those witnesses, and present rebuttal evidence and argument.

B. The Court Order Does Not Permit the Commission to Remove the Lower Noise Limits for the Six Sensitive Residences.

While the Commission may cite general statutory authority to reopen a case on specified issues as a matter of discretion, in this particular case, however, the Court did not allow for it to reconsider the issue of the six residences previously designated as sensitive so as to be afforded lower noise limits. The Court stated this specifically in its Decision and Order regarding the six sensitive residences:

“....the proceeding is remanded to the Commission with direction that the Commission state on the record why, if it can, based on the record already accumulated, the six residences were selected and the other eleven were not. If, based upon the record herein, the Commission is not able to state why the six residences were selected and the other eleven were not, then the matter is reopened solely for the purpose of allowing the parties to state why other sensitive residences, already identified, should be considered and the Commission can then decide if others, already identified, should be included with the original six residences.” Court Decision and Order, p. 110 (Emphasis added)

The Court goes on to repeat this order:

“The matter is remanded to the Commission, not for further evidentiary hearing on other residents who may be sensitive to noise and/or shadow flicker, but for the purpose of allowing the Commission to state why, if it can, based on the record already accumulated, the six residences were selected and the other eleven were not. If, based upon the record herein, the Commission is not able to state why the six residences were selected and the other eleven were not, then the matter is reopened solely for the purpose of allowing the parties to state why other sensitive residences, already identified, should be considered and the Commission can then decide if others_s, already identified, should be included with the original six residences.” Court Decision and Order, p. 114.

Finally, the Court repeats this identical Order on p. 115 of its Decision and Order. Given this language from the Court, there can be no question but that the Court did not allow for reopening as to the original six. The key point of the Court order on the issue of sensitive residents is that it requires the Commission to consider inclusion of additional residences to the sensitive designation, i.e. expanding the group within the designation.

Reopening to start over on the issue of whether the six residences should be offered lower noise limits is unfair to those six residences designated by the Commission's own orders as meriting lower noise limits. These households have had the comfort of knowing that their families' health would be protected via lower noise limits and now, years later, the Commission signals that this protection might be removed. Even worse, the protection will be removed in a process that does not even allow them the opportunity to respond to what Highland might offer in opposition to their status. Reopening the case on this matter comes as a surprise to those six residences and has the appearance of retaliation for the appeal. This is exactly what the Court's order expressly sought to avoid.

If the Commission pursues the elimination of the lower limit for any of the original six residences, due process requires that there be a full hearing to 1) give those residences an opportunity to present testimony and evidence to show why the limit should not be removed; and 2) for testimony considering the addition of new ones, i.e., to expand the number of residences subject to the lower limit. If the lower noise limits are reconsidered, then public interest and fairness require that the Commission consider adding other sensitive residents, not just those 17 originally proposed. Several years have passed, occupants of other residences may have developed comparable health issues, and new residents may have moved into the community. A full hearing is necessary to allow all changes to be brought forward.

Removal of the lower noise limits for the six sensitive residences would appear to be retaliation against the Town for having sought judicial review of the issue on behalf of its residents. If the noise conditions for the six are removed, they will be worse off for having been the subjects of the Town's appeal rather than better.

In summary, the Court expressly restricted the Commission from rethinking the lower nighttime noise limit for the original six sensitive residences. The Commission may not, pursuant to the Court Decision, now act to remove the 40 dBA nighttime noise limitation on any of the six residences.

II. FOREST VOICE URGES THE COMMISSION TO REQUIRE A NIGHTTIME NOISE LIMITATION OF 40 DBA FOR ALL 17 RESIDENCES PREVIOUSLY IDENTIFIED AS HAVING SENSITIVE RESIDENTS.

The Court found that at the Commission's decision to exclude eleven residences, beyond the original six, from lower noise limits was nothing more than an arbitrary decision for which there is no rational basis in the record.

Because there are no distinctions in the record between the six residences already designated as sensitive, and the other eleven, Forest Voice requests that the additional eleven receive the benefit of the lower noise limitations. The literature indicates that noise levels greater than 40 dBA increase human stress:

Although annoyance, sleep disturbance, and stress were linked to environmental noise, the authors point out that these effects are only attributable to wind turbines when they are generating sound levels over 40 dB(A), a sound level that can be avoided through proper siting and which is greater than some European regulatory limitations.^{2, 3} (Footnotes omitted)

The Commission should require a nighttime noise limit of 40 dBA for all seventeen residences already identified as having residents sensitive to noise.

III. FOREST VOICE SUPPORTS REMOVING THE 95% COMPLIANCE STANDARD AND RELYING ON THE EXISTING STANDARD TO REQUIRE COMPLIANCE WITH REGULATORY NOISE LIMITS 100% OF THE TIME.

² E.g., Wisconsin Wind Siting Council Wind Turbine Siting-Health Review and Wind Siting Policy Update, October 2014, citing Pedersen, E. (2011). Health aspects associated with wind turbine noise—Results from three field studies. *Noise Control Engineering Journal*, 59(1), 47-53.

³ See also: expert witness David Hessler's recommendation for 40 dBA design goal. Transcript Vol. 10, pp 1228 (PSC REF #179558).

The Commission's own rules already include a clear limit on noise attributable to the operation of wind energy systems: "[A]n owner shall operate the wind energy system so that the noise attributable to the wind energy system does not exceed 50 dBA during daytime hours and 45 dBA during nighttime hours." Wis. Admin. Code § PSC 128.14(3). This standard was adopted following the recommendation of the Wisconsin Wind Siting Council. The Council's *Final Recommendations to the Public Service Commission* state that, "[f]or all system size categories, the noise attributable to the system should never be allowed to exceed 45 dBA at night or 50 dBA during the day, as measured at the outside wall of any nonparticipating residence or occupied community building." (Emphasis added).

Wis. Admin. Code § PSC 128.14(3) and the Council's recommendation clearly mandate that the noise standards are to be met all of the time rather than for some part of the time. Further, as the Court found, there was absolutely no basis in the record for the Commission to have imposed a percentage-based standard such as it did. The Commission cannot now rely on a comment submitted by Highland, if it in fact presents this option, to undo a standard set by its own rule on the recommendation of the Wind Siting Council.

Moreover, the Commission's Final Decision of March 15, 2013 (PSC REF # 182254, p. 8) found that the proposed project could not meet the existing noise standards. The project's proposed noise mitigation procedure, one that has never been tried or proven effective elsewhere, is a band-aid response to the design flaws of the project. See the testimony of expert witness David Hessler, testifying in favor of the project, that the project will "inevitably" incur noise limit exceedances.⁴

⁴ Transcript Vol. 10, pp 1227 (PSC REF #179558). Q: And that's consistent with your testimony before that if you have a design goal of 40 dBA, the project will inevitably produce sounds of 45 or even 50 and then perhaps higher at some point? A: Right. That happens in every project, so that is – in effect no project could ever meet some absolute limit set in that vicinity all of the time under all conditions.

A percentage-based standard that allows less than complete compliance with existing regulatory noise standards would, in effect, boot-strap a project that by failure of its very design cannot hope to comply with noise limits to approval by the Commission. A percentage-based standard of even 95% will compound the compliance issues presented by this project as Highland will have no incentive to curb the noise exceedances. The exceedances, which will be allowed to occur on a regular basis, will harm residents living nearby and generate complaints about Highland.

Because the project cannot possibly meet the current 100% standard, Forest Voice urges the Commission to again reject the entire project and deny the CPCN, as it did originally. This is a bad location for a project of this scale. This community is too densely populated to make a project such as this suitable.

Forest Voice has always taken the position that this controversy is all about location, and not about wind energy. Unlike its neighboring states, Wisconsin was settled as a dairy state, which means that as it was settled the farms were small, often only 20 or 40 acres. That in turn means that the residences are closer together than they are in states, such as Iowa, with different agricultural histories, where vast fields of wheat, soybeans, and corn have been grown in areas with sparse populations.

Support for this is found in the following table from the October 2014 report of the Wisconsin Wind Siting Council, Appendix L: Population Densities in areas of Midwestern Wind Energy System Development.⁵ The population density is greater both in the counties and towns in Wisconsin in which wind energy systems are located than in any other neighboring state. There is a greater risk of exposure from turbines located close to homes because the residences are closer to one another.

⁵ Available at: <http://psc.wi.gov/renewables/documents/windSitingReport2014.pdf>.

State	Illinois	Indiana	Iowa	Michigan	Minnesota	Wisconsin
County Population Density per Sq. Mi. where Wind Energy Systems exist	84	105.8	21.8	101.5	27.1	163.2
Town Population Density per Sq. Mi. where Wind Energy Systems exist	28.5	24.3	11.3	30	7.6	35.1

Based on the record in this docket, it is inevitable that the proposed Highland project will, if constructed, exceed the noise limitations of Wis. Admin. Code PSC 128 and the project's CPCN, and that there will then be complaints.

Based on the testimony of witnesses in this docket who live near other wind energy projects in the state, and public comments to the Commission⁶, Forest Voice has great concerns about the efficacy of the Commission's complaint procedure. At the previous hearings in this case, multiple individuals living near other existing wind farms in Wisconsin testified that they were never able to satisfactorily resolve complaints through the Commission's process.⁷ They have gotten no relief

⁶ E.g., PSC REF # 284314

⁷ See, e.g., PSC REF #188515, public comments of James Mueller and PSC REF #189624, pp. 2028-2033, Direct Testimony of James Mueller.

"We live in Fond du Lac County in Blue Sky Green Field wind turbine project ... We have been living with industrial wind turbines for 5 years. Blue Sky/Greenfield in Fond du Lac County. Five years of hell. Eighty eight turbines with about 5 turbines within a mile of our home. We have asked for independent testing to be done for several years due to health issues we face every day. Called the Public Service Commission for years. We are told the Public Service cannot force sound studies, it must be brought up through legislation at the state level ..."

We called We Energies, our elected officials and Public Service Commission. No one helped us. No one even came out to check on this. We Energies representative Steve Schueller told us wind turbines are machines and machines make noise. We Energy -- excuse me, I cannot believe we are here today looking at a possibility of the Wisconsin Public Service to allow another industrial wind turbine farm when we know it will cause families to move out of their homes and cause illnesses to others.

See Also PSC REF #188637, public comment of Darlene Mueller and PSC REF #189624, pp. 2033 – 2036, Direct Testimony of Darlene Mueller

"I would call WE Energies sometimes on a nightly basis with no help at all. We were told by WE Energies before the turbines were put up that they would be no louder then [sic] a refrigerator running but now are told that they are

from excessive turbine noise levels that disturb their sleep, their lives and their health. The problems and inadequacies of addressing excessive noise levels emitted by an operating wind farm on an after-the-fact, post-violation complaint process are highlighted by their testimony.

The circumstances in the community of Forest warrant the 100% compliance standard. The proximity of big turbines to homes, the evidence that this project cannot meet the noise requirements, and any exceedances allowed by a percentage standard less than 100% will expose residents to wind turbine noise that has caused many others to suffer stress, migraines, tinnitus, dizziness, sleeplessness and general annoyance.

IV. FOREST VOICE OBJECTS TO THE FAILURE OF THE COMMISSION TO PROVIDE AN EVIDENTIARY HEARING REGARDING HEALTH STUDIES

Stepping way outside the bounds of the Court's Order, the Commission has asked for comments to "take official notice" of published studies of the health impacts of wind turbine noise. A limited time for comment, as opposed to a hearing, on two large compilations of studies and papers does not allow sufficient time for Forest Voice to retain and work with experts to review and analyze the studies. Moreover, it is unclear from the Order to Reopen why the Commission reopened the record for this topic. Will the Commission use the comments on these studies to reconsider the topic of sensitive residences, or the topic of compliance standards?

machines and machines make noise. I would call the PSC begging for help and were told to talk to our legislators. I would call our legislators and was told to call the PSC."

"We have lived in the Blue Sky Green Field wind turbine area for 35 years, five of those having wind turbines. From our home we can see about 68 of the 88 turbines. Since day one, the whomping, jet sounding, humming, vibrating, droning noise that goes throughout our home day in and night long have basically incarcerated me. Endless nightless sleep, maybe ending up with a total of two hours of sleep a night for weeks on end.

I would call We Energies sometimes on a nightly basis with no help at all. We were told by We Energies before the turbines were put up that they would be no louder than a refrigerator running, but now are told that they are machines and machines make noise. I would call the PSC begging for help and were told to talk to our legislator. I would call our legislator and was told to call the PSC. I have notebooks documenting my phone calls to everyone. I begged and pleaded with the PSC...."

Further, Forest Voice cannot anticipate what Highland might offer on the expansive studies cited in the Order to Reopen. The inadequacies of a process comprised solely of a comment period prejudice Forest Voice's ability to fully offer evidence on these studies and rebut evidence that Highland may offer. This is a violation of Wis. Stats. §227.42. Forest Voice and every other party should have the opportunity to rebut any new evidence or argument regarding health impacts of wind turbine noise submitted via "comment" especially as it impacts critical issues in this case.

The Commission should not take official notice of these studies without, at the very least, a hearing

V. THE PEER-REVIEWED STUDIES ON HEALTH CONCERNS RELATING TO WIND TURBINES ARE IRRELEVANT TO THE ISSUE OF SENSITIVE RESIDENCES IN THIS CASE.

As discussed above, the Court in its Remand Order did not allow for the Commission to reconsider the issue of whether any residence should benefit from lower nighttime noise limits, but rather ordered the Commission to consider whether the other already identified eleven sensitive residences should be included with the original six. This will entail comparison by the Commission of the medical conditions in the six sensitive residences, already identified in the record, with those in the other eleven households, also already in the record. The Commission cannot now create and rely on new evidence to reconsider the issue of sensitive residences. If the Commission wishes to take up the issue of the relationship between wind farms and public health, then it should open a new and separate docket to comprehensively take evidence and address the status of the scientific studies.

VI. THE COMMISSION'S APPLICATION OF THE LEGAL STANDARD OF "A REASONABLE DEGREE OF SCIENTIFIC CERTAINTY" TO THE

RELATIONSHIP BETWEEN WIND TURBINE NOISE AND HUMAN HEALTH HAS NO BASIS IN LAW.

In the Final Decision on Reopening, PSC REF # 192339, the Commission states, at p. 16, the following: “As the Commission noted in its prior decision in this proceeding, the Commission is not convinced that a causal link between audible or inaudible noise at wind generating facilities and human health risks has been established to a reasonable degree of scientific certainty.” (Emphasis added)

That standard, “a reasonable degree of scientific certainty,” has no basis in law in the context of a decision whether to grant a CPCN or not. The proper standard is whether the project will have an “undue adverse impact on other environmental values, such as, but not limited to ... public health and welfare.....” Wis. Stats. §196.491(3)(d)(4).

Almost every study referenced in the two documents of which the Commission takes official notice in its Order, Notice and Request for Comments accepts that wind turbine noise adversely impacts the physical or mental health of some portion of the public that live nearby. Any application of a legal standard higher than the current statutory standard ignores the abundant evidence in this record and in the literature of people who have abandoned homes⁸, or report

⁸ See, e.g., PSC REF #171116, DIRECT TESTIMONY OF JOSEPH YUNK

I am testifying to provide the Commission with my personal experience living near the Glacier Hills Farm in the Town of Scott, Columbia County, Wisconsin. Q. Where did you live before your present residence? A. I lived at north 7905 Count Trunk P, Algoma, Wisconsin. Q. Why did you move? A. That house was located in the Wisconsin Public Service Corporation’s wind farm in the Town of Lincoln, in Kewaunee County. I moved to get away from the wind farm because it made living there unbearable.

See also PSC REF #171179

DIRECT TESTIMONY OF LARRY WUNSCH

I want to explain what it was like to live in the shadows of a wind farm. My wife and I owned a house in Brownsville, Wisconsin when the Forward Wind Energy Center was constructed. We had to abandon our home as a result of the wind farm and would like the Public Service Commission to consider this harm when it determines whether the Highland Wind Farm should be constructed as proposed.

sleeplessness, stress, tinnitus, nausea, difficult concentrating, etc. Those are clearly public health issues; it is well understood that increased stress often leads to heart disease and other serious conditions.

Forest Voice urges the Commission to give full weight to the real-life experiences of members of the public who live near wind turbines. So called “anecdotal” evidence should not be ignored. It describes the sincere experience of ordinary people living near wind turbines in Wisconsin. There is abundant evidence in this record and in the literature that some persons have been so significantly adversely impacted that they have abandoned their homes, finding that their symptoms disappear when they leave home and reappear when they return. The statute says that an energy project may not adversely impact public health. This is not an election where the majority wins. If members of the public are significantly adversely impacted, the statutory standard is not met. That is especially true where, as here, the project as designed will not meet the applicable noise standards without the use of experimental and untried noise mitigation measures. It was for this reason that a majority of the Commission originally denied the CPCN. See PSC REF #182254.

VII. THERE IS NO INDICATION THAT ANY OF THE PUBLISHED STUDIES ON THE HUMAN HEALTH IMPACTS OF WIND TURBINE NOISE INCLUDE PERSONS WHO LIVE IN PARTICIPATING RESIDENCES.

It is the common and accepted practice in the wind turbine industry to include in lease contracts between the developer or owner of the wind turbine and the landowner a strict confidentiality clause. For example, Section 2 of the 29 page lease Emerging Energies LLC uses for the Highland project includes a clause prohibiting the landowner from disclosing, among other things, “any books, records, product designs or any other information regarding Wind Company’s business of operations on the Property [of landowner]”.

Landowners are subject to “gag orders” such as this which surely bias the results of studies by discouraging participating landowners from honestly and openly discussing any adverse consequences of wind turbines. If the studies of the effects of wind turbine noise on humans do not include in the sample the experiences of participating landowners, the results are suspect, at best.

VIII. FOREST VOICE URGES THE COMMISSION TO TAKE THE PRECAUTIONARY APPROACH OF “FIRST, DO NO HARM”.

It is unquestioned that there is controversy about whether wind turbine noise, whether audible or inaudible (infrasound) impacts human health, and if so, to what extent. See, for example, in this record the study requested by the Commission, in this proceeding, of infrasound at the Shirley Wind Farm in Brown County. It provides persuasive evidence that wind turbines produce inaudible sound, called infrasound. See “Shirley Report” (PSC REF #178884)^{9,10}. There is no disagreement with the fact that wind turbines can produce very low frequency inaudible infrasound. The two documents of which the Commission proposes to take official notice in its order PSC REF #283217 cite numerous studies which 1) report this controversy; 2) acknowledge that there are some people living near wind turbines who complain of health effects they previously did not have or which disappear when they remove themselves from the proximity of the wind turbines; and 3) call for more research.

⁹ “A Cooperative Measurement Survey and Analysis of Low Frequency and Infrasound at the Shirley Wind Farm in Brown County, Wisconsin”. The team of noise experts who conducted the study included all of the principle acoustical engineers called as experts by the parties in this proceeding, on both sides of the controversy. Among their findings and conclusions were the following:

“The four investigating firms are of the opinion that enough evidence and hypotheses have been given herein to classify LFN and infrasound as a serious issue, possibly affecting the future of the industry. It should be addressed beyond the present practice of showing that wind turbine levels are magnitudes below the threshold of hearing at low frequencies.”

¹⁰ The Shirley Project was developed by the same team of developers that is proposing the Highland project.

What if future research finds a definitive link between certain health conditions and wind turbine noise? For decades the connection between DDT and bird mortality was not known. For decades the link between tobacco smoke and lung cancer was not known. So it is with audible wind turbine noise and infrasound. “If a project, like this one, is built without full, complete, and accurate analysis, it has the potential to cause even more problems, and result in even more scrutiny or skepticism of future projects.” (PSC Chair Nowak, dissenting on Final Decision on Reopening, p. 4, PSC REF # 192339)

As the Court in St. Croix County said, the Commission “...seems to have forgotten the PUBLIC part of its name....” *Town v. Public Service Commission*, supra, p. 109. (Emphasis in the original). To meet the Commission’s obligations to the public, Forest Voice urges the Commission to use its discretion to err on the side of caution and reverse its Final Decision on Reopening (PSC REF #192339).

IX. CONCLUSION

The St Croix County Circuit Court remanded this case to the Commission for its failure to act in the public interest and provide for a fair and adequate process on the issues of a compliance standard for the wind farm noise and the arbitrary exclusion of eleven households from receiving lower noise limits. Under the Court’s order, the Commission must at this time schedule an evidentiary hearing on these remand issues in order to provide the parties and the public with an opportunity to be heard and to rebut opposing evidence.

Forest Voice urges the Commission not to adopt any compliance standard other than that found in the PSC 128, namely, compliance 100% of the time. Turbine noise at an occupied structure should never exceed 50 dBA in the daytime and 45 dBA at night. That limit and that compliance standard were adopted through the prescribed rule-making process and there is no justification for lowering it.

Regarding the question of sensitive residences, Forest Voice requests that the Commission comply with the Court order. This case was reviewed and remanded back to the Commission by the Court expressly for the purpose of considering whether to expand the number of residences subject to a nighttime noise limit of 40 dBA. The Commission must not eliminate any of the original six residences. Any request or action to do so would smack of retaliation.

Further, the Commission must hold a full hearing to give the other eleven households that were not included and which alleged sensitive health conditions an opportunity to show, if they can, why they should also benefit from the lower nighttime noise limit.

In order to protect public health and welfare, and in the interest of fairness, and because there may be new residents or changed health conditions, the Commission must also give the occupants of other residences in the project the opportunity to show why they could also benefit from the lower limits.

Further, the official notice of the scientific studies, as cited by the Commission, presents a complex and vast topic requiring the opinion of technical experts. The brief comment period afforded by the Order to Reopen, however, fails to allow for adequate time by Forest Voice to retain and develop the opinion of experts in this area. Again, this broad topic should be developed in the context of an evidentiary hearing with the opportunity to cross-examine and rebut opposing evidence.

It is in the public interest, and in the long term interest of wind energy, to protect the public health and welfare in the Town of Forest and prevent a repeat of the situation at the Shirley Wind Farm, where controversy has continued unabated for years. The noise from those turbines has made it impossible for local residents to remain in their homes. When they are near the turbines their health problems are severe, and when they are elsewhere, the problems disappear. The experts

who testified in this docket stated explicitly that they see no reason why the same problems and controversy will not happen at Highland.¹¹

Finally, Forest Voice urges the Commission to amend its Final Decision on Reopening and deny the CPCN. The Highland Wind Project as originally designed did not meet the noise limits of Wis. Admin. Code PSC 128.14, a problem that will not be remedied by the hypothetical and unproven proposed noise mitigation plan. This project is stale. Presumably the technology has changed, the market has changed, and the community has changed. The decision to approve this project was made almost thirty months ago. Much has changed. This application should be denied and the developers should, if they wish, be required to submit a new and updated application.

Respectfully submitted this 15th day of April, 2016

By

Law Office of Peter E. McKeever
Attorney for Forest Voice

By

/s/

Peter E. McKeever
Attorney at Law
SBN 1015142

6302 Southern Circle
Monona, WI 53716
608-223-1275
petermckeever@charter.net

¹¹ “In this specific case, it seems justified to the two firms to be conservative (one more than the other) to avoid a duplicate project to Shirley at Highlands because there is no technical reason to believe the community response would be different.” A Cooperative Measurement Survey and Analysis of Low Frequency and Infrasound at the Shirley Wind Farm in Brown County, Wisconsin, (PSC REF # PSC REF #178884).